

TCEQ DOCKET NO. 2011-1565-IWD

APPLICATION BY DOS REPUBLICAS COAL PARTNERSHIP MAVERICK COUNTY, TEXAS FOR TPDES PERMIT NO. WQ0003511000	§ § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Dos Republicas Coal Partnership (Applicant or DRCP) files this response (Response) to the requests filed with the Texas Commission on Environmental Quality (TCEQ) for a contested case hearing on the renewal application for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003511000 (TPDES Permit). This is a "straight" renewal (without amendment) of the TPDES Permit, for which there is no right to a contested case hearing under agency rules. Additionally, as written by the Executive Director (ED), the draft permit includes requirements that are *more protective* of the environment than the current permit. Therefore, Applicant respectfully requests that the Commission deny all hearing requests and approve the renewal of the TPDES Permit.

I. BACKGROUND

The Application concerns the Eagle Pass Mine, a sub-bituminous coal mine located approximately five miles northeast of the City of Eagle Pass, in Maverick County, and requests renewal of the TPDES Permit, which authorizes the discharge of storm water and mine seepage from active mining areas. The permit was previously the subject of a contested case hearing

which was held on June 20-22, 1994. In the 1994 proceeding, after considering the application the evidence and the arguments presented, the Hearing Examiner recommended that the Commission approve the permit.¹ The Commission agreed and issued the TPDES permit on November 29, 1994.² The permit has since been renewed two times, in 2001 and 2006. No hearing requests were filed for either the 2001 or 2006 permit renewals.

Now the Eagle Pass Mine is about to begin significant mining operations, and DRCP has applied to the Railroad Commission of Texas (RCT) for renewal of and amendment to its surface mining permit. A hearing on the RCT application is scheduled to begin on October 17, 2011 and the controversy associated with that RCT application appears to have spilled over into this TPDES renewal application, given that previous renewals of this TPDES permit generated absolutely no local interest. Because the RCT hearing involves a separate agency and statutes, we do not view that hearing as having any bearing on the renewal of this TPDES permit. DRCP is not asking to amend the TPDES permit and no amendment is needed for the company to begin the next phase of its operations.

As currently permitted, the treated effluent from mining operations would be initially discharged into unnamed on-site ditches, and from there the water will flow to Elm Creek and finally into the Rio Grande below the Amistad Reservoir.³ This renewal would make no material changes to the quantity or type of discharges, and the changes to the location of on-site discharge routes are already authorized by a special condition in the existing permit.⁴ In reviewing the

¹ At that time, the Commission was known as the Texas Natural Resource Conservation Commission.

² Texas Natural Resource Conservation Commission Order issuing Permit No. 03511 to Dos Republicas Resources Company, Inc., Nov. 29, 1994. (**Marked as Applicant's Exhibit A**).

³ See Texas Commission on Environmental Quality Permit No. WQ0003511000 to Dos Republicas Coal Partnership, p. 1, issued Nov. 16, 2006.

⁴ See Executive Director's Response to Public Comments (RTC), p.2, July 28, 2011; TPDES Permit Other Requirements, Provision No. 4.

Application, the ED determined that the unnamed ditches have no significant aquatic life use, while Elm Creek has high aquatic life use. The ED also determined that the designated uses of the segment of the Rio Grande into which the waste water would be discharged, are high aquatic life use, contact recreation, and public water supply.⁵ The effluent limits in the draft permit will maintain and protect the existing instream uses.⁶

II. PROCEDURAL INFORMATION

The application was submitted to the TCEQ on February 26, 2010 and was declared administratively complete on March 31, 2010. Notice of the application was published in two local newspapers in English and in Spanish, as required by TCEQ rules.⁷ Additionally, following public notice, a public meeting was held in Eagle Pass on January 25, 2011 on the renewal application.

III. THE EVALUATION PROCESS FOR HEARING REQUESTS

A. No Right to Contested Case Hearing For a “Straight Renewal”

On a TPDES renewal application, the bar is extremely high for any person to obtain a contested case hearing. In fact, the Applicant is unaware of any water quality “straight renewal” application that has been sent to hearing by the TCEQ in the last ten years. Significantly, here a contested case hearing was previously held on the Permit, and following that hearing the Commission agreed that the discharge limitations for this operation are protective of human health, aquatic life, and the environment.

⁵ *Id.*

⁶ Executive Director’s RTC at 4; Fact Sheet and Executive Director’s Preliminary Decision p. 1, August 12, 2010.

⁷ The Notice of Receipt of Application and Intent to Obtain a Water Quality permit (NORI) was published on April 22, 2010 in *The News Gram* in both English and Spanish. The Notice of Application and Preliminary decision (NAPD) was published on October 21, 2010 in *The Eagle Pass Business Journal* and in both English and Spanish in *The News Gram* on October 22, 2010.

Under state law and TCEQ rules, there is no right to a contested case hearing on a Chapter 26 water quality permit application, if 1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge; 2) the activity to be authorized by the renewal permit will maintain or improve the quality of waste authorized to be discharged; 3) any required opportunity for public meeting has been given; 4) consultation and response to all timely received and significant public comment has been given; and 5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.⁸ Of these five threshold hearing factors (Threshold Hearing Factors), there can be no reasonable argument that Factors 3 (public meeting) and 4 (ED's response to comments) have not been satisfied in this application process.⁹ A person's mere factual or policy disagreement with the ED's response to a comment is not a basis for a contested case hearing on a renewal application such as this one. Factor 5 is met, and not in dispute, as no hearing request has specifically challenged the adequacy of the TCEQ compliance history of the Applicant.¹⁰

So, at most, we are left to evaluate Threshold Hearing Factors 1 and 2. As in the original permit and subsequent renewals of this permit, the proposed renewal allows the discharge of storm water and mine seepage on an intermittent and flow variable basis. The proposed effluent

⁸ TEX. WATER CODE § 26.028(d); 30 TAC §55.201(i)(5). It should also be noted that these regulations are applicable to all persons and make no distinction between those who were "affected persons" in the original permitting matter and those that were not. Thus, one cannot avoid the applicability of state law and agency rules because they failed to obtain "affected person" status in the original permitting matter.

⁹ The Request by Maverick County Environmental and Public Health Association states that the Association "disputes" the ED's responses to comments 3 and 4 in the RTC. Likewise, the Request by Jim and Rosa O'Donnell takes issue with the ED's response to comment 22 regarding national effluent standards which the O'Donnell's claim should not apply to the Mexican Border Area.

¹⁰ The O'Donnell's correctly note that DRCP has zero environmental violations in Texas, but their vague statements of an alleged poor record in Mexico do not in fact challenge the TCEQ compliance history, which does not include environmental compliance matters (whether good or bad) regarding operations outside of Texas (unless involving the US EPA). 30 TAC §60.1(c).

limitations in the Draft Permit, including those for volume and concentrations, are no different than those already allowed under the current permit.¹¹ Given the effluent limits and the total volume of wastewater discharge authorized under the current permit are exactly the same as the effluent limits and the total volume of wastewater discharge that would be authorized under this permit renewal, one cannot reasonably argue that the Applicant has significantly increased the quantity of waste that *is authorized* to be discharged. Therefore, as to Factor 1, the Application plainly does not seek to change, much less “increase significantly”, the quantity of waste authorized to be discharged. Additionally, the Application does not change materially the pattern or place of discharge, as the TPDES permit boundaries are unchanged and the discharge routes are not materially changed. Just like the original and subsequent renewals of this permit, this renewal proposes that the effluent will be discharged to unnamed ditches; from there the effluent will flow to Elm Creek and eventually to the Rio Grande. The draft permit states that all wastewater will continue to be discharged on the mining property into ditches that flow to Elm Creek and then to the Rio Grande.¹² Hence, the Applicant has not materially changed the pattern or place of discharge in this renewal.

Finally, as to Factor 2, the renewal Application does not request or authorize any new activity which is not already authorized under the current TPDES Permit, and hence in no way would fail to maintain the quality of waste authorized to be discharged under the current Permit. The proper comparison here is to what waste discharges are currently authorized and not, as

¹¹ Compare Permit No. WQ0003511000 issued on November 16, 2006, p.2 and Draft Permit No. WQ 0003511000 (Marked as Applicant's Exhibit B).

¹² Compare Finding of Fact 25, Texas Natural Resource Conservation Commission Order issuing Permit No. 03511 to Dos Republicas Resources Company, Inc., p. 7, Nov. 29, 1994 and Draft Permit No. WQ 0003511000 (Marked as Applicant's Exhibit B).

some of the Requestors have claimed, a comparison of pre-mining discharges versus discharges allowed by the renewal.

Similar to the Texas Clean Air Act's position on public participation in "no increase renewal applications,"¹³ water quality permit renewals (and even amendments) that do not run afoul of the Threshold Hearing Factors are not subject to the contested case process.

B. Failure to Raise a Threshold Hearing Factors In Hearing Request

The deadline to request a hearing, and to set forth the basis for the request, closed on August 31, 2011. Except for those few instances noted in the above section, the Requestors have utterly failed to chin the bar and set forth any meaningful challenge to the five Threshold Hearing Factors required by 30 TAC §55.201(i)(5). Instead, they have generally treated the comment period and hearing request period as if they were challenging an entirely new TPDES application by, for example, making various allegations of pollution, incompatible land uses, concerns about dust, the potential hazards of mining, and the like. As previously discussed, the five Threshold Hearing Factors are the only basis for a person to obtain a hearing on a permit renewal such as this. Hence, there is no legal basis for a hearing and, consistent with the requirements of 30 TAC §§ 55.201(i)(5) and 55.201(d)(4), the Applicant respectfully requests the Commission deny all hearing requests for this matter and approve the TPDES Permit as requested.

C. Past Commission Action on Other Renewal Applications

In September 2008, the Nueces County Water Control and Improvement District No. 5 applied for the renewal of TPDES Permit No. WQ0011583001. As noted by the ED in his Response to Hearing Requests in the Nueces County WCID matter, "[t]he Applicant is not

¹³ TEX. HEALTH & SAFETY CODE §382.056(g).

applying to increase significantly the quantity of waste authorized to be discharged; or change materially the pattern or place of discharge . . . Therefore, by rule, there is no right to a contested case hearing in this case.”¹⁴ On September 9, 2009, the Commission issued an order approving the issuance of the Nueces County WCID TPDES Permit No. WQ0011583001. In that order the Commission stated:

Both the Executive Director and the Office of Public Interest Counsel, among other matters, stated in their responses that there is no right to a hearing on the renewal application under Section 36.028(d) of the Texas Water Code and 30 TAC Section 55.201(i)(5).

After evaluation of the request for hearing, related written filings, and answers to questions during its public meeting, the Commission found that there was no right to a hearing under the applicable law, Texas Water Code Section 26.028(d) and agency rule, Section 55.201(i)(5). Accordingly, the Commission denied the request for hearing based on its finding that there is no right to a hearing in this matter.¹⁵

The application by DRCP is similarly situated, in that the Applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. The Applicant respectfully recommends that the Commission should apply the appropriate legal standard and follow past Commission precedent and deny the hearing requests in this matter.

¹⁴ Executive Director’s Response to Hearing Request, Nueces County Water Control and Improvement District No. 5, August 14, 2009.

¹⁵ Texas Commission on Environmental Quality Order concerning the application by Nueces County Water Control and Improvement District No. 5 for renewal of TPDES Permit No. WQ001583001 and related filing: TCEQ Docket No. 2009-0678-MWD, pp. 1-2, Sep. 9, 2009 (**Marked as Applicant’s Exhibit C**).

IV. DETERMINATION OF AFFECTED PERSONS

A. Legal Standard

For all the reasons discussed previously, DRCP believes that this Application falls squarely within the terms of 30 TAC §§ 55.201(i) as a renewal application for which there is no right to a contested case hearing. Additionally, however, we assert that no person who has requested a hearing in this Docket has demonstrated that they are an “affected person” under the applicable TCEQ rules. TCEQ rules state that a contested case hearing can only be requested by 1) the TCEQ Commissioners, 2) the TCEQ Executive Director, 3) the Applicant, or 4) an “affected person.”¹⁶ An “affected person” is defined as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.¹⁷ Accordingly, a request for a contested case hearing must include a brief, but specific, description of the person’s location and distance relative to the activity that is the subject of the application.¹⁸ In addition, the person must do more than just provide a conclusory statement in the request that he or she will be harmed by the application, if granted. The person must provide a brief, but specific description of how and why he or she will be affected by the granting of the application.¹⁹

Persons claiming to be affected persons must also submit their hearing requests in writing to the Chief Clerk “within the time period specified in the notice.”²⁰ For purposes of the Application, the Chief Clerk’s notice directed all potential requestors to submit their requests for

¹⁶ 30 TAC § 55.209(d).

¹⁷ 30 TAC § 55.203(a).

¹⁸ 30 TAC § 55.251(c)(2).

¹⁹ *Id.*

²⁰ 30 TAC §§ 55.251(b), (d), 55.254(a).

a contested case hearing to the Chief Clerk within 30 days after notice of the Executive Director's decision was mailed to all persons on the mailing list. Notice was mailed on August 1, 2011, and therefore, all timely hearing requests must have been received by the Chief Clerk by August 31, 2011.

When determining whether an individual or entity is an "affected person," all relevant factors are considered by the Commission, including: 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and 5) the likely impact of the regulated activity on use of the impacted natural resource by the person.²¹

B. Evaluation of Hearing Requests

Because this is a renewal application, to be "affected" a person would need to show how a *change in the permit* from the current permit would adversely affect a legal right, duty, privilege, power, or economic interest of the person. The current permit, which was the subject of a previous contested hearing before it was initially approved by the Commission, already authorizes the discharge of storm water and mine seepage from active mining areas. The permit renewal, if approved by the Commission, will not materially change what is already allowed under the current permit. In fact, the permit renewal actually includes requirements that are *more protective* of the environment than the current permit, such as Other Requirement No. 14, which allows TCEQ to review the permit after any new intensive water quality study on Segment No.

²¹ 30 TAC § 55.256(c)(1)-(5).

2304 of the Rio Grande Basin.²² Therefore, the “affected person” demonstration is much more difficult in this instance than, for example, a hearing request that would be made on a new water quality discharge permit.

Even ignoring the higher bar described above, the Applicant has reviewed each hearing request received by the Chief Clerk and none of those requests contain sufficient information to adequately demonstrate “affected person” status. Attached hereto as **Exhibit D** is a chart which identifies specific deficiencies in each requestors claim to be an “affected person.” Most requests utterly fail to “explain in plain language the requestor’s location and distance” to the operation, which is a fundamental requirement of the TCEQ rules. Others vaguely allege the requestor lives “near” or “very close” to the operation or indicate some proximity to Elm Creek, all without any discussion of whether the person is located upstream or downstream from the mine. Unless a person clearly demonstrates their location and distance, and the fact that a discharge from the operation could affect them, they have failed to show they are “affected.”

Finally, a number of hearing requestors state that they have been granted party status by the Railroad Commission. Whether a person has been granted party status by the Railroad Commission on a mining permit has absolutely no bearing on whether that person has complied with all of the requirements to be an affected person under TCEQ’s hearing request rules for TPDES permits.

V. HEARING ISSUES AND MAXIMUM EXPECTED DURATION

Because it is clear that no person has a right to a contested case hearing on this permit renewal, there is no reason for the Applicant to set forth hearing issues or the maximum duration of a hearing.

²² See Fact Sheet and Executive Director’s Preliminary Determination, p. 2, August 12, 2010.

VI. REQUEST FOR RECONSIDERATION

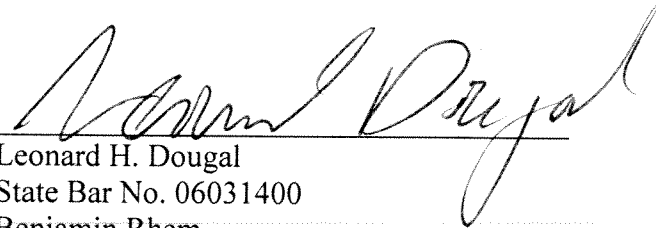
The Kickapoo Traditional Tribe of Texas also filed a request for reconsideration (RFR). The issues were raised during the comment period and thus, were considered and addressed in the ED's RTC. The RFR did not raise any new issues or include additional information that would change the analysis already performed by the ED. Therefore, the Applicant requests that the RFR be denied.

VII. APPLICANT'S RECOMMENDATION

WHEREFORE, PREMSIES CONSIDERED, the Applicant respectfully requests that the Commission:

1. Deny all requests for contested case hearing; and
2. Approve the renewal of TPDES Permit No. WQ0003511000, as recommended by the Executive Director.
3. Deny the Request for Reconsideration.

Respectfully submitted,



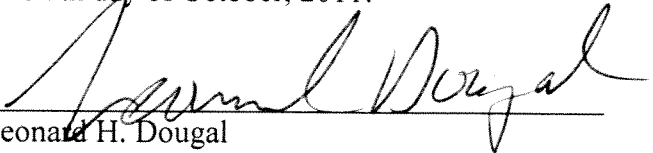
Leonard H. Dougal
State Bar No. 06031400
Benjamin Rhem
State Bar No. 24065967

Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Telephone: (512) 236-2000
Facsimile: (512) 391-2112

ATTORNEYS FOR DOS REPUBLICAS
COAL PARTNERSHIP

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to the following as indicated below on the 7th day of October, 2011:


Leonard H. Dougal

FOR THE APPLICANT:
(via First Class Mail)

Andres Gonzales-Saravia Coss
Dos Republicas Coal Partnership
5150 North Loop 1604 West
San Antonio, Texas 78249-1325

Joel Trouart
The North American Coal Corporation
14785 Preston Road, Suite 1100
Dallas, Texas 75254-6823

Lisa O. McCurley, P.E.
Hill Country Environmental, Inc.
1613 S. Capital of Texas Hwy., Suite 201
Austin, Texas 78746- 6524

FOR THE EXECUTIVE DIRECTOR
(via electronic mail)

Robert Brush (MC-173)
Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division
P.O. Box 13087
Austin, Texas 78711-3087

Melinda Ann Luxemburg (MC-148)
Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division
P.O. Box 13087
Austin, Texas 78711-3087

Brian Christian (MC-108)
Director, Public Education Program
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance Division
P. O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
(via electronic mail)

Mr. Blas J. Coy, Jr., (MC-103)
Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel
P.O. Box 13087
Austin, Texas 78711-3087

FOR ALTERNATIVE DISPUTE
RESOLUTION

(via electronic mail)

Mr. Kyle Lucas (MC-222)
Texas Commission on Environmental
Quality
Alternative Dispute Resolution
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

(via electronic mail)

Ms. Bridget C. Bohac (MC-105)
Office of Chief Clerk
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, Texas 78711-3087

REQUESTER(S)

(via First Class Mail)

Keith Ayers
P. O. Box 1290
Eagle Pass, Texas 78853-1290

Carlos E De La Pena
6016 North U.S. Highway 277
Eagle Pass, Texas 78852

George Baxter
P. O. Box 951
Eagle Pass, Texas 78853-0951

Albert & Tina Ellis
HC 2 Box 172
Eagle Pass, Texas 78852-9603

Elizabeth Burkhardt
Representing The Kickapoo Traditional
Tribe of Texas
9821 Shadow Wood Drive
Houston, Texas 77080-7107

Jesus Castillon
3131 Memorial Court, Apt. 304
Houston, Texas 77007-6175

Aurellano & Terri Contreras
Route 2 Box 211
Eagle Pass, Texas 78852-0211

Terri Contreras
Route 2 Box 211
Eagle Pass, Texas 78852

Tricia Cortez
Laredo Community College
West End Washington Street
P-11, 1st Floor
Laredo, Texas 78040-4395

Samuel C. Day-Woodruff
Lowerre, Frederick, Perales, Allmon &
Rockwell
707 Rio Grande Street, Suite 200
Austin, Texas 78701-2719

Gabriel & Leticia De La Cerda
307 County Road 307
Eagle Pass, Texas 78852-4994

Gabriel De La Cerda
307 County road 307
Eagle Pass, Texas 78852-4994

Mr. and Mrs. Raul Espinoza
3420 Del Rio Boulevard
Eagle Pass, Texas 78852-3709

David Frederick
Lowerre Frederick, Perales, Allmon &
Rockwell
707 Rio Grande Street, Suite 200
Austin, Texas 78701-2719

Ana Maria & Humberto Gamez
HC 2 Box 190
Eagle Pass, Texas 78852-9603

Alonzo & Eva E. Gonzalez
HC 2 Box 185
Eagle Pass, Texas 78852-9603

Carlos Hernandez
1975 North Veterans Boulevard, Suite 6
Eagle Pass, Texas 78852-4456

Gloria Hernandez
490 Hillcrest Boulevard
Eagle Pass, Texas 78852-4617

Mike P. Hernandez
HC 2 Box 171-B
Eagle Pass, Texas 78852-9838

Ladye & Walter Herring
3959 FM 1588
Eagle Pass, Texas 78852-4995

Mr. & Mrs. Hierro
1942 Sueno Circle
Eagle Pass, Texas 78852-3761

Ernest G. Ibarra
3187 Tina Drive
Eagle Pass, Texas 78852-3740

Celeste P. Lira
6223 I.H. 20 West
San Antonio, Texas 78201

Kim Wall & Prosser Martin
2781 FM 1588
Eagle Pass, Texas 78852-4981

Claudio Sandoval Martinez
3913 Deer Run Boulevard
Eagle Pass, Texas 78852-3783

Heriberto Morales, Jr.
401 Quarry Street
Eagle Pass, Texas 78852-4526

Mrs. Jose M. Morales
1232 Royal Haven Drive
Eagle Pass, Texas 78852-3825

Jim & Rosa O'Donnell
HC 2 Box 194
Eagle Pass, Texas 78852-9603

Eli & Sharo Perez
P. O. Box 4728
Eagle Pass, Texas 78853-4728

Martha M. Ramirez
P. O. Box 2020
Eagle Pass, Texas 78853-2020

Martha S. Ramirez
P. O. Box 2020
Eagle Pass, Texas 78853-2020

Mr. Javier Riojas
Texas Rio Grande Legal Aid, Inc.
P. O. Box 2001
Eagle Pass, Texas 78853-2001

Claudio H. Sandoval
3907 Deer Run Boulevard
Eagle Pass, Texas 78852-3783

Jesus H. Sandoval
3903 Deer Run Boulevard
Eagle Pass, Texas 78852-3783

Jose Sandoval
3853 Fawn Drive
Eagle Pass, Texas 78852-3686
Betty & E K Taylor
Route 2 Box 186
Eagle Pass, Texas 78852

Mr. and Mrs. Santos Torres
Route 2 Box 361
Eagle Pass, Texas 78852

Mr. & Mrs. Alfonso A. Trevino
1298 Zarette Circle B
Eagle Pass, Texas 78852

Mr. & Mrs. Enrique Trevino
1298 Zarette Circle
Eagle Pass, Texas 78852

Mr. & Mrs. Guillermo Villarreal
3572 Olmos Circle
Eagle Pass, Texas 78852-3250

PUBLIC OFFICIALS - INTERESTED
PERSON(S)
(via First Class Mail)

The Honorable Tracy O. King
Texas Representative
Texas House of Representatives
P. O. Box 290, room Ext. E1.304
Austin, Texas 78768-2910

The Honorable Carlos I. Uresti
The Senate of the State of Texas
District 19
P. O. Box 12068, Room E1.810
Austin, Texas 78711-2068

EXHIBIT A

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AN ORDER issuing Permit No. 03511
to Dos Republicas Resources
Company, Inc.

On November 16, 1994, the Texas Natural Resource Conservation Commission (Commission) considered the application of Dos Republicas Resources Company, Inc. (DRRC) for authority to discharge effluent from mining operations at an intermittent and variable rate, depending upon precipitation, pursuant to Chapter 26 of the Texas Water Code.

The application was presented to the Commission with a Proposal for Decision written by Leslie Craven, Attorney, a Commission Hearings Examiner, who conducted preliminary hearings on January 12, March 21, April 25, and June 15, 1994 and an adjudicative public hearing concerning the application on June 20, 21, and 22, 1994 in the cities of Austin and Eagle Pass, Texas.

The Hearings Examiner designated the following as parties to the proceeding: the applicant, DRRC; the Executive Director and the Public Interest Counsel of the Commission; the City of Eagle Pass; the Sierra Club; Theodosia Coppock; Ladye, Walter, and Virginia Herring; Dan Riskind; Jesus Rubio; Raymundo Moncada; and Humberto Gamez.

After considering the Hearings Examiner's Proposal for Decision and the evidence and arguments presented, the Texas Natural Resource Conservation Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On May 14, 1992, DRRC applied to the Texas Water Commission, predecessor agency to the Commission, for Permit No. 03511 to authorize the discharge of effluent from a coal mining operation in Maverick County, Texas at an intermittent and variable rate, depending upon precipitation.
2. The application was declared to be administratively complete on August 3, 1992 and technically complete on October 19, 1992.
3. Proper notice of the public hearings held on this application was given pursuant to Section 26.022 of the Texas Water Code.
 - a. Notice of the initial public hearing was published on December 2, 1993 in the Eagle Pass News Guide, a newspaper regularly published and generally circulated in Maverick County, Texas, which is the location of the proposed facility.
 - b. Notice of the public hearing was mailed on November 23, 1993, by the Chief Clerk of the Commission to all persons who may be affected by any action taken by the Commission and to each person as required by law.
4. DRRC's proposed mine area is located generally northwest of Eagle Pass, Texas on 2700 acres, approximately 1000 to 1250 acres of which will be mined.
5. Three of four possible mining areas (Areas A, B, and C) have been considered in this application and will be permitted by the Order in this case. Mining Area D, under consideration as

part of the full mining plan before the Railroad Commission of Texas (RCT) is not part of the application in this case.

6. The proposed coal mining operation is expected to generate between 700 and 800 jobs in the Eagle Pass area and to produce an annual mine employment payroll between \$10 to \$12 million with accompanying tax revenues to local, state, and federal taxing entities.
7. DRRC's drainage control system at this facility will contain, direct, and discharge waters associated with its proposed mining operations through the construction and utilization of thirteen sediment control ponds, four diversion and two interceptor ditches. Commission regulations do not specify design criteria for surface mining drainage control facilities.
8. The RCT has jurisdiction under the Texas Surface Mining and Reclamation Act to regulate mining activities and regulates the design of facilities related to surface mining drainage control and stream channel diversions.
9. DRRC has designed its treatment system to meet RCT requirements that the pond facilities provide a minimum ten-hour detention time for the 10-year/24-hour storm event rainfall. The ten-hour detention time is enhanced by the design, which factors in the effect of accumulated sediment in the ponds.

10. Diversion ditches are designed to contain and route the water flow generated during the 10-year/24-hour storm event from Elm Creek and the Elm Creek watershed around the mine site.
11. The sediment pond design further provides that the principal and emergency spillways together can safely pass flows associated with the less frequent, although more extensive, 25-year/24-hour storm event.
12. The sediment control pond design incorporates the RCT requirement that there be three years storage availability for sediment in each pond and are designed so that cleaning activities will not interfere with the ability of ponds to retain water runoff.
13. The sediment ponds do not provide either aerobic or anaerobic effluent treatment but do provide treatment by means of the detention time which allows the settling of sediments.
14. The two primary geologic formations in the mine area are the Olmos formation and the Elm Creek alluvium.
15. The Olmos formation, which underlies the entire project site, outcrops on the surface generally in the south and southeast areas of the site and subcrops under the Elm Creek alluvium farther north on the site. It is composed of a consolidated formation of clays and coals with some sandstone and has a very low permeability of approximately 0.13 to 0.55 millidarcies, essentially that of cured cement or an impervious landfill liner.

16. The Elm Creek alluvium is composed of unconsolidated sands, clays, and gravels deposited by the creek in the floodplain and is more permeable than the Olmos formation.
17. The two primary bodies of water which flow through and around the permit site are Elm Creek and Lateral 21.
18. Elm Creek flows into the permit area from the north, where it has ephemeral flow, and exits the permit area along a south/southwest route. About halfway through the site and roughly in a location south of Lateral 21, Elm Creek flow becomes intermittent-perennial through the remainder of the site and downstream from the project boundary. The alluvium north of Lateral 21 remains unsaturated or dry while the alluvium south of Lateral 21 is saturated, containing and transmitting groundwater.
19. Lateral 21, a portion of the Maverick County Irrigation District canal system, is pumped upvalley from the west/southwest and ends roughly in the middle of the site. Lateral 21 provides the primary infusion of water to the portion of Elm Creek that flows south/southeast of the lateral through groundwater seepage and direct return surface flow from the end of the lateral. Seepage occurs because the lateral is excavated into the permeable Elm Creek alluvium.
20. Besides general monitoring and reporting requirements, the permit contains the following effluent discharge limitations: daily average of 35 milligrams per liter (mg/l) and daily maximum of 70 mg/l for total suspended solids (TSS), daily

average of 3.0 mg/l and daily maximum of 6.0 mg/l for total iron, a daily maximum of 1.0 mg/l total selenium and a Ph requirement of not less than 6.0 and not more than 9.0 standard units.

21. Pursuant to 30 Tex. Admin. Code §321.78, an additional permit limitation to those set out in Finding of Fact No. 20, requires that any discharge caused by a precipitation event within any 24-hour period less than or equal to the 10-year/24-hour precipitation event shall comply with the limitation of daily maximum 0.5 milliliter per liter (ml/l) settleable solids. This latter limitation does not apply when the discharge is caused by a precipitation event greater than the 10-hour/24-hour precipitation event. If the precipitation event is greater than the 10-year/24-hour precipitation event, the discharge shall maintain a Ph range of 6.0 to 9.0 standard units instead of otherwise applicable limitations.
22. The Commission's permit requirements in Section 321, referenced in Finding of Fact No. 21, are generally consistent with the EPA's Coal Mining Point Source Category Effluent Limitations Guidelines and New Source Performance Standards; Final Rule found at Volume 50, Federal Register No. 196, October 9, 1985 and are identical to the EPA's effluent limitations set out in 40 CFR §434.63.
23. The proposed method for treatment of discharges from the mine site through use of sediment ponds complies with the Best Available Technology Economically Achievable (BAT) required by

the EPA and EPA's applicable New Source Performance Standards (NSPS).

24. Selenium testing is consistently imposed in all Commission mining discharge permits as a mechanism to facilitate the general gathering of data on selenium associated with coal mining operations. It is for this reason that the selenium requirement is made a requirement of this permit.
25. The proposed discharge would be to a series of unnamed ditches, thence to Elm Creek, thence to the Rio Grande River in Segment No. 2304 of the Rio Grande River Basin.
26. A discharge in compliance with the final terms and conditions of Permit No. 03511 will be protective of the quality and existing uses of the receiving waters and will comply with all applicable statutory and regulatory criteria.
 - a. The proposed discharge under permit requirements will not cause violations of the general criteria, including aesthetic parameters, that govern stream quality as set out in 30 Tex. Admin. Code §307.4.
 - b. The numerical criteria applicable to Segment No. 2304 of the Rio Grande River Basin, as set out in 30 Tex. Admin. Code §307.10, are 5.0 mg/l dissolved oxygen, Ph between 6.5 and 9.0 standard units, maximum fecal coliform of 200 col/100 ml, and maximum temperature of 95 degrees Fahrenheit. The proposed discharge under permit requirements will not cause violations of these criteria.

c. The proposed discharge under permit requirements will not cause violations of the specific numerical criteria for aquatic life and human health found in 30 Tex. Admin. Code §307.6 or of the allowable concentrations of hazardous metals found in 30 Tex. Admin. Code §319.22.

(1) A water quality study was run taking samples from surface water in Lateral 21 and Elm Creek and groundwater from the alluvium south of Lateral 21. Samples were taken from September 1992 through June 1994.

(2) The minimum analytical level or "MAL" is the lowest level at which concentrations of constituents may be measured with detection equipment by the discharger.

(3) The study results establish that constituents pertaining to water quality standards in 30 Tex. Admin. Code §§307.6 and 319.22 exist at levels either below the MAL or, if they were of amounts capable of measurement, they were within the acceptable range for that constituent as determined by the Commission and set forth in §307.6 and §319.22.

d. Findings in the above subsections (a), (b), and (c) do not take into account further dilution of the effluent that will occur from storm water runoff entering the

ponds or from the discharges commingling with receiving stream waters.

- e. The designated uses for Segment No. 2304 of the Rio Grande River Basin, as set out in 30 Tex. Admin. Code §307.10, are contact recreation, high aquatic life, and public water supply. Discharge is made directly to an unclassified water body and, pursuant to 30 Tex. Admin. Code §307.4 (h) and (k), Elm Creek and various ditches in the vicinity of this discharge are determined to have no significant aquatic life use. No impoundments or hydrologic conditions exist to change this determination and seepage from Lateral 21 is not sufficient to change the intermittent nature of the creek.
- f. The proposed discharge under permit requirements will not cause impairment of existing uses nor otherwise cause degradation of the quality of the receiving waters in violation of 30 Tex. Admin. Code §307.5.
 - (1) Downstream flooding will not be increased and will likely be lessened due to the temporary storage and retention time provided by the sediment control ponds, which act as a buffer to allow the release of the water at slightly lower rate.
 - (2) Anticipated slight stream flow gains and losses will come from increased pit pumpage and losses of some irrigation return runoff and area runoff. The cumulative approximate acreage lost from project

activities is only 1 to 4 percent of the total watershed acreage above the site, causing only a negligible impact on stream flow which is difficult to measure with any precision.

(3) Current Elm Creek water quality meets stock water standards but does not meet drinking water standards and is of poor quality for irrigation.

27. The applicant has appropriately characterized the quality of water inflow to the mining pits which will ultimately flow into and be discharged from the sediment control ponds.

a. Surface water samples from Lateral 21 and Elm Creek and groundwater collected from Mining Area C located in the alluvium south of Lateral 21, used for analysis, are the best representations of expected mine pit pumpage to the sediment ponds, as is further noted in the Findings of Fact Nos. 17, 18, and 19 regarding the relationships of the water at this site.

b. Groundwater samples from the Olmos formation and the alluvium north of Lateral 21 (Mining Areas A and B) were not used because, as noted in Findings of Fact Nos. 16 and 18, these formations contain little or no groundwater for later contribution to the mine pits.

c. The 129 priority pollutant constituents are not found in effluent discharges from coal mine sediment control ponds in significant concentrations to warrant technology-based

effluent limitations as established by extensive sampling and analysis by the EPA.

- d. It is not standard Commission practice to require separate testing of coal leachate and this application presents no special circumstances which might otherwise warrant or necessitate a change in this practice.
 - e. In determining the quality of expected pit inflows, the applicant's study tested for inorganics in the groundwater and organics in the surface waters. Radionuclides and various miscellaneous parameters were tested for in both surface water and groundwater samples.
 - f. Data on organics collected from the surface waters is comparable to organic data from the alluvium and a direct test for organics in the alluvium is not likely to yield any better information than that found from the surface waters of Lateral 21 and Elm Creek, as these waters are the primary contributors to the alluvium groundwater supply.
28. The applicant has appropriately characterized the quantity of the expected water inflow to the mining pits and sediment ponds.
- a. DRRC's facility design assumes pit inflows will primarily flow from the Mining Area C groundwater.
 - b. Contribution to the mining pits inflows from surface rainfall runoff and rainfall directly into the open pits

is too small to be factored into anticipated flow calculations.

- c. As noted in Findings of Fact Nos. 18, 19, and 27(b), the alluvium beneath Mining Areas A and B is generally dry and is unlikely to contain substantial groundwater to contribute to the mine pits.
 - d. The amount of fractures which develop in rock generally correlates to how brittle the formation is.
 - e. The general clay and coal composition of the Olmos formation (Finding of Fact No. 15) which underlies the project site is malleable and is not conducive to allowing the formation of fractures which might transmit groundwater through what is otherwise impermeable material. Should fractures develop, they will generally confine themselves to the boundaries of the clays and coal which make up the Olmos formation.
 - f. There are no known fractures in the Olmos formation at or in the vicinity of this mine site.
29. No special lining material is required for the sediment control ponds at this permit site.
- a. No Commission or EPA regulations pertaining to the coal mining operations call for any special or artificial lining for coal mining sediment control ponds and no showing was made that unique circumstances exist at this site to warrant the installation of a special liner.

- b. In-situ soils provide the lining for the sediment control ponds at this site. When in-situ soils serve as the lining material, the likelihood of leakage depends on the permeability of the ground beneath the ponds.
 - c. The sediment control ponds are either dug directly into the impermeable Olmos formation, which is essentially of liner quality and underlies the entire project site, or into the Elm Creek alluvium, which is underlined by the Olmos formation.
 - d. Even should some leakage from the sediment control ponds occur, the effluent will not contain any harmful constituents that may cause violations of applicable water quality standards.
30. The applicant's sediment control ponds and diversion ditches are adequately designed to control, retain, and route waters generated by the 10-year/24-hour storm event around the mining site, meet all applicable federal and state regulations, and will enable DRRC to meet permit requirements.
- a. It is generally not possible to contain and control all waterflow generated in a major storm event such as the 25, 100, or 500-year storms on a site as large as the applicant's or involving a watershed as large as that which exists north of this site. No state or federal regulations mandate such a requirement.
 - b. Applicable state and federal regulations do set what are essentially identical limitations for discharges that

result from rainfalls greater and less than the 10-year/24-hour storm event. These limitations in 30 Tex. Admin. Code §321 and 40 CFR §434 are set out in Finding of Fact No. 21.

- c. The EPA has determined that the above-referenced limitations found in Finding of Fact No. 21 can be met using EPA's BAT and NSPS.
 - d. The applicant's proposed system of ponds and ditches for discharge treatment complies with the above noted EPA standards and control technologies, referenced in Finding of Fact No. 23.
 - e. Pursuant to Findings of Fact Nos. 7 - 13, 26, and 30, DRRC's proposed system design is appropriate and will enable DRRC to comply with permit requirements.
31. DRRC provided adequate information on area groundwater without having to test three windmill wells and one hand-dug well located north on the permit area.
- a. DRRC has gathered over two years of monitoring data from wells in the same area and has made over 200 boreholes in its efforts to characterize area groundwater.
 - b. DRRC did not specifically test the four noted wells for quality and permeability, but did perform "plop" tests on the three windmill wells to determine whether they contained any water.
 - c. The two of three windmill wells which contained water most likely draw their water from the San Miguel

formation due to their location northwest of the mine site and the fact that they contain water that would not generally be produced from the impermeable Olmos formations.

- c. The one 1931 Getzendanar geologic map that differs from the conclusions reached by DRRC regarding the line of demarcation between the Olmos and San Miguel formations is not reliable or credible data. At least ten other more recently prepared geologic maps disagree with the 1931 Getzendanar map conclusion and support the conclusion reached by the applicant's expert.
32. Updated information related to estimated outfall drainage areas, pond dimensions, and flow data provided during the hearing does not constitute a major amendment to DRRC's application under applicable Commission rules.
- a. Commission rule 30 Tex. Admin. Code §281.23 provides that no amendment to an application that constitutes a "major" amendment can be made without new notice.
 - b. Section 281.23 uses the definition of a "major" amendment as that term is defined in 30 Tex. Admin. Code §305.62(c) pertaining to major amendments to permits. Substituting the term "application" for "permit," found in Section 305.62(c) defines a "major" amendment to an application as one that changes a substantive term, provision, requirement, or a limiting parameter of the application.

- c. The additional information provided in the hearing does not change a substantive term, provision, requirement, or a limiting parameter of DRRC's application.

CONCLUSIONS OF LAW

1. The public hearing regarding the permit application was held under the authority of and in accordance with Chapter 26 of the Texas Water Code and the Texas Natural Resource Conservation Commission Permanent Rules.
2. The Commission has jurisdiction to consider the application and is authorized to issue a permit for the discharge of effluent into the waters of the State.
3. Discharge of effluent in compliance with the terms and conditions of Permit No. 03511 will maintain the quality of water in the State consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the State.
4. Discharge of effluent in compliance with the terms and conditions of Permit No. 03511 will not violate the antidegradation policy set forth in 30 Tex. Admin. Code §307.5.
5. In order to effectuate the policies of this state as set forth in Chapter 26 of the Texas Water Code and to administer all powers and duties described therein, the application should be approved and Permit No. 03511 be issued.

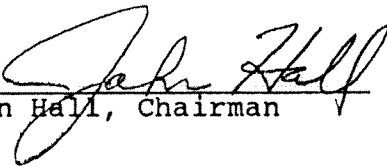
WHEREAS Chairman John Hall and Commissioners Pam Reed and Peggy Garner vote unanimously to issue this Order;

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION THAT:

1. The application of DRRC for Permit No. 03511 be approved in accordance with the terms and conditions contained in the final permit attached to this Order and all exceptions inconsistent therewith be overruled.
2. The Chief Clerk of the Texas Natural Resource Conservation Commission forward a copy of this Order and attached permit to all parties and, subject to the filing of motions for rehearing, issue the attached permit.
3. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: NOV 29 1994

Texas Natural Resource
Conservation Commission


John Hall, Chairman

ATTEST:


Gloria A. Vasquez, Chief Clerk

EXHIBIT B



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P. O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0003511000
[For TCEQ office use only -
EPA I.D. No. TX0109011]

This is a renewal of TPDES Permit
No. WQ0003511000, issued on
November 16, 2006.

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Dos Republicas Coal Partnership

whose mailing address is

5150 North Loop 1604 West
San Antonio, Texas 78249

is authorized to treat and discharge wastes from the Eagle Pass Mine, a sub-bituminous coal mine (SIC 1221)

located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, Maverick County, Texas

to unnamed ditches; thence to Elm Creek; thence to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin

only according to effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight on September 1, 2015.

ISSUED DATE:

For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Numbers 001 through 013

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge storm water and mine seepage from the active mining area (*1) subject to the following effluent limitations:

Volume: Intermittent and flow variable

Effluent Characteristics	Discharge Limitations		Minimum Self-Monitoring Requirements	
	Daily Average mg/l	Daily Maximum mg/l	Single Grab mg/l	Report Daily Average and Daily Maximum Measurement Frequency Sample Type
Flow (MGD)	(Report MGD)	(Report MGD)		
Total Suspended Solids (TSS)	35	70	N/A	1/week (*2) Estimate
Total Iron	3.0	6.0	70	1/week (*2) Grab
Total Manganese	2.0	4.0	6.0	1/week (*2) Grab
Total Selenium	N/A	0.036	4.0	1/week (*2) Grab
			0.036	1/month (*2) Grab

- (*1) See Other Requirement No. 2.
(*2) When discharge occurs.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*2) by grab sample.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
4. Effluent monitoring samples shall be taken at the following locations: At Outfalls 001 through 013, at the spillway retention pond associated with each outfall (see Other Requirement No. 3), and prior to mixing with any other waters.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC ' ' 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) ' ' 5.103 and 5.105, and the Texas Health and Safety Code (THSC) ' ' 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Texas Water Code §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the Adaily discharge@ is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the Adaily discharge@ is calculated as the average measurement of the pollutant over the sampling day

The Adaily discharge@ determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the Adaily discharge@ determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day

- e. Bacteria concentration (Fecal coliform, E. coli, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month.

The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substitute value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

- f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
 - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC '319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC '319.9 (b).
 - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes .
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC '319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act; TCW Chapters 26, 27, and 28; and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC '319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR '264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
 - i. date, time, and place of sample or measurement;
 - ii. identity of individual who collected the sample or made the measurement.
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC '305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
 - i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
- c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.

- d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved selfreport form.
- 8. In accordance with the procedures described in 30 TAC ' 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC ' 305.128 (relating to Signatories to Reports).

- 11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
 - c. For the purpose of this paragraph, adequate notice shall include information on:
 - i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:

- i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC ' ' 305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC ' 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code ' ' 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA ' ' 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA ' 402, or any requirement imposed in a pretreatment program approved under the CWA ' ' 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC §7.002.

The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC ' 305.534 (relating to New Sources and New Dischargers); or
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes that are not described in the permit application or that would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the TWC ' 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC ' 305.64 (relating to Transfer of Permits) and 30 TAC ' 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Texas Water Code Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, '101(15)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, '101(2)) of the permittee.
- b. This notification must indicate:
 - i. the name of the permittee;
 - ii. the permit number(s);
 - iii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iv. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC ' ' 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC ' 7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words Aconfidential business information@ on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.

- a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.
 - c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
 10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.

11. Facilities that generate industrial solid waste as defined in 30 TAC ' 335.1 shall comply with these provisions:

- a. Any solid waste, as defined in 30 TAC ' 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
- b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
- c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC ' 335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
- d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC ' 335.5.
- e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
- f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - i. Volume of waste and date(s) generated from treatment process;
 - ii. Volume of waste disposed of on-site or shipped off-site;
 - iii. Date(s) of disposal;
 - iv. Identity of hauler or transporter;
 - v. Location of disposal site; and
 - vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Code Chapter 361.

OTHER REQUIREMENTS

1. Violations of daily maximum limitations for the following pollutants shall be reported orally or by facsimile to TCEQ Region 16, within 24 hours from the time the permittee becomes aware of the violation followed by a written report within five working days to Texas Commission on Environmental Quality (TCEQ) Region 16 and the Enforcement Division (MC 224).

<u>POLLUTANT</u>	<u>MAL (mg/l)</u>
Iron, total	1.0
Manganese, total	1.0
Selenium, total	0.010

Test methods utilized shall be sensitive enough to demonstrate compliance with the permit effluent limitations. Permit compliance/noncompliance determinations will be based on the effluent limitations contained in this permit with consideration given to the minimum analytical level (MAL) for the parameters specified above.

When an analysis of an effluent sample for any of the parameters listed above indicates no detectable levels above the MAL and the test method detection level is as sensitive as the specified MAL, a value of zero (0) shall be used for that measurement when determining calculations and reporting requirements for the self-reporting form. This applies to determinations of daily maximum concentration, calculations of loading and daily averages, and other reportable results.

When a reported value is zero (0) based on this MAL provision, the permittee shall submit the following statement with the self-reporting form either as a separate attachment to the form or as a statement in the comments section of the form.

"The reported value(s) of zero (0) for _____ [list parameter(s)] _____ on the self-reporting form for [monitoring period date range] _____ is based on the following conditions: 1) the analytical method used had a method detection level as sensitive as the MAL specified in the permit, and 2) the analytical results contained no detectable levels above the specified MAL."

When an analysis of an effluent sample for a parameter indicates no detectable levels and the test method detection level is not as sensitive as the MAL specified in the permit, or an MAL is not specified in the permit for that parameter, the level of detection achieved shall be used for that measurement when determining calculations and reporting requirements for the self-reporting form. A zero (0) may not be used.

2. Active Mining Area:

- A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
- B. All discharges from all retention ponds shall comply with the limitations for hazardous metals as regulated under the TCEQ, Permanent Rule, Title 30 Texas Administrative Code (TAC) Chapter 319, Subchapter B, 319.21 - 319.29, "Hazardous Metals".
- C. All retention ponds shall be constructed prior to disturbing the natural soils in preparation of any mining activity. Upon initiation of any mining related activity in the watershed of any particular pond, the permittee shall notify the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office. A record of the design dimensions, construction information, the pond drainage area and a map, sketch or drawing showing the location of each pond shall be maintained at the site and shall be readily available for inspection by authorized representatives of the permitting authority.

- D. Discharges from the retention ponds shall be monitored in accordance with this permit from the time the natural soils are disturbed until reclamation of the disturbed soils is complete and until the performance bond (Phase Two) issued by the appropriate authority has been released. At least 10 days prior to any such action, the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office shall be notified in writing of the permittee's intent to close any retention pond or to discontinue monitoring.
- E. For discharges from "active mining area" ponds that do not contain mine pit water (or water that has contacted acid forming or toxic forming spoil) the following effluent limitations shall apply, and shall replace the effluent limitations listed on page 2 of this permit.

Any discharge caused by a precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event, or snowmelt of equivalent volume shall comply with the following limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

Pollutant or Pollutant Property	<u>Maximum for any 1 Day</u>
Settleable Solids*	0.5 ml/l
pH - within the range of 6.0 to 9.0 at all times.	

* These limits do not apply when the discharge is caused by a precipitation event greater than the 10-year/24-hour precipitation event.

- F. The term "10-year, 24-hour rainfall event" shall mean a rainfall event with the probable recurrence interval of once in ten years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.
3. Samples shall be collected at each outfall, when discharge occurs. The sampling location for each outfall is at the spillway of the retention pond associated with that outfall, and prior to mixing with any other waters. The outfalls, associated pond numbers, and discharge routes are as follows:

Permitted Outfall & Pond ID	Facility Pond ID	Discharge Route
001	SP-6	From the spillway on the south side of the pond to Elm Creek;
002	TBD*	From the spillway on the southwest side of the pond to a ditch, thence to Elm Creek;
003	Int Pond 003; SP-2	From the spillway on the southwest corner of the pond into a ditch, thence to Elm Creek;
004	SP-1	From the spillway on the southwest corner of the pond to a ditch, thence to Elm Creek;
005	TBD*	From the spillway on the east side of the pond to a ditch, thence to a culvert, thence to Elm Creek;
006	SP-7	From the spillway on the southwest corner of the pond to a tributary, thence to Elm Creek;
007	SP-5	From the spillway on the southeast corner of the pond to Elm Creek;
008	SP-3	From the spillway on the southeast corner of the pond to Elm Creek;
009	TBD*	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;
010	TBD*	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;

Permitted Outfall & Pond ID	Facility Pond ID	Discharge Route
011	TBD*	From the spillway on the north side of the pond to a series of ditches, thence to Elm Creek;
012	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
013	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek.

TBD* means "to be determined." The Pond ID will be determined upon final design; revisions will be made pursuant Other Requirement No. 4 of this permit.

4. The permittee shall maintain a map at the mine site which shows the location of all ponds and discharge routes. The map and pond list shall be available to authorized TCEQ personnel. The permittee may revise the pond location map. Upon revision, the permittee shall submit revised maps to the TCEQ Wastewater Permitting Section (MC-148), and to the Region 16 Office.
5. Post Mining Areas:
 - A. The term "Post mining area" is defined as a reclamation area; or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.
 - B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
 - C. The term "Bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.
 - D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining areas.
6. This permit does not authorize the discharge of storm water from construction activities. The permittee shall obtain all necessary permits, including coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit No. TXR150000, or most recent construction storm water general permit as applicable, prior to initiating any storm water discharge from construction at the site.
7. The permittee shall provide to the TCEQ Wastewater Permitting Section (MC-148) copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.
8. This permit does not authorize the disposal of domestic sewage. Domestic sewage shall be routed to a septic tank/drainfield system.
9. The permittee shall notify the TCEQ Region 16 office as each discharge point is developed.
10. The permittee shall notify the Executive Director of the TCEQ at least 90 days prior to conducting any activity of closure of any pit, pond, lagoon, or surface impoundment regulated by this permit.

11. Discharges from the retention ponds shall be monitored in accordance with the requirements of this permit from the time the overburden removal begins until reclamation of the disturbed soils is complete and the performance bond issued by the appropriate authority has been released. At least 10 days prior to such action, the permittee shall notify TCEQ Region 16 office and the TCEQ Wastewater Permitting Section (MC-148) in writing of it's intent to close any retention pond or discontinue monitoring.
12. The Attached Effluent Data Table 1 shall be completed with the analytical results for each Outfall 001 through 013, when discharge occurs, and sent to the TCEQ, Wastewater Permitting Section (MC-148), within 90 days following the completion of the fourth discharge sampling event for any of the applicable outfalls. Sample collection and test methods shall be in accordance with the instructions for *Completing the Industrial Wastewater Permit Application Worksheet 2.0 - Pollutant Analyses Requirements*. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.
13. Reporting requirements pursuant to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in the permit are suspended from the effective date of the permit until facility start-up or discharge, whichever comes first, from the facility areas and applicable outfalls described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC R 16) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to facility area start-up or applicable outfall anticipated discharges, whichever occurs first and prior to completion of each additional phase on Notification of Completion Form 20007.
14. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2304 of the Rio Grande Basin and any subsequent updating of the water quality model for Segment No. 2304 in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Sections 305.62, as a result of such review.

**ATTACHMENT
TABLE 1**

Outfall No.	<input type="checkbox"/> C <input type="checkbox"/> G	Effluent Concentration (mg/l)					
Pollutants		Samp. 1	Samp. 2	Samp. 3	Samp. 4	Average	
BOD (5-day)							
CBOD (5-day)							
Chemical Oxygen Demand							
Total Organic Carbon							
Ammonia Nitrogen							
Total Suspended Solids							
Nitrate Nitrogen							
Total Organic Nitrogen							
Total Phosphorus							
Oil and Grease							
Total Residual Chlorine							
Total Dissolved Solids							
Sulfate							
Chloride							
Fluoride							
Fecal Coliform							
Temperature (°F)							
pH (Standard Units; min/max)							
		Effluent Concentration (µg/l)					MAL (µg/l)
Total Aluminum							30
Total Antimony							30
Total Arsenic							10
Total Barium							10
Total Beryllium							5
Total Cadmium							1
Total Chromium							10
Trivalent Chromium							N/A
Hexavalent Chromium							10
Total Copper							10
Cyanide							20
Total Lead							5
Total Mercury							0.2
Total Nickel							10
Total Selenium							10
Total Silver							2.0
Total Thallium							10
Total Zinc							5

EXHIBIT C

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER concerning the application by Nueces County Water Control and Improvement District No. 5 for renewal of TPDES Permit No. WQ0011583001 and related filings; TCEQ Docket No. 2009-0678-MWD.

On September 9, 2009, the Texas Commission on Environmental Quality (TCEQ or Commission) during its public meeting evaluated the request for a contested case hearing submitted by Mr. Lionel Lopez on behalf of the South Texas Colonia Initiative, Inc. concerning the application by Nueces County Water Control and Improvement District No. 5 for renewal of TPDES Permit No. WQ0011583001. The request for hearing was evaluated under the requirements in the applicable statutes and Commission rules, including Section 26.028(d) of the Texas Water Code and 30 Texas Administrative Code (TAC) Section 55.201(i)(5). The Commission also considered all timely public comment; the Executive Director's Response to Public Comment; and all other timely filings in this matter, including the responses to the request for hearing filed by the Executive Director and the Office of Public Interest Counsel and the August 21, 2009 letter from Mr. Israel Carrasco. Both the Executive Director and the Office of Public Interest Counsel, among other matters, stated in their responses that there is no right to a hearing on the renewal application under Section 26.028(d) of the Texas Water Code and 30 TAC Section 55.201(i)(5).

After evaluation of the request for hearing, related written filings, and answers to questions during its public meeting, the Commission found that there was no right to a hearing under the applicable law, Texas Water Code Section 26.028(d) and agency rule, Section

55.201(i)(5). Accordingly, the Commission denied the request for hearing based on its finding that there is no right to a hearing in this matter. In addition, the Commission revised the Executive Director's Response to Public Comments to delete the references on pages one and two to a public meeting having been held on the renewal application in light of the response during the public meeting by Executive Director staff that no public meeting had been held on the renewal application during the public comment period. The Commission also adopted the revised Response to Public Comments as the Commission's Response to Public Comments, which is attached hereto as Exhibit A, and it approved issuance of the renewal permit, TPDES Permit No. WQ0011583001, as recommended by the Executive Director.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. There is no right to a hearing on the application for renewal of TPDES Permit No. WQ0011583001;
2. The request for hearing submitted by Mr. Lionel Lopez on the behalf of the South Texas Colonia Initiative, Inc. is DENIED;
3. The references on pages one and two of the Executive Director's Response to Public Comment to a public meeting having been held on the renewal application by agency staff are deleted, and the revised Response to Public Comments is ADOPTED as the Commission's Response to Public Comments, which is attached hereto as Exhibit A; and
4. The issuance of TPDES Permit No. WQ0011583001 is APPROVED as recommended by the Executive Director.

Issue date: **SEP 09 2009**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

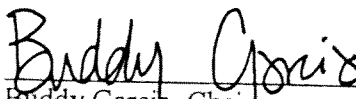

Buddy Garcia, Chairman

EXHIBIT D

EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
Renewal of TPDES No. WQ0003511000

Date of Hearing Request	Name of Requestor	"Affected Person" Deficiency in Hearing Request
	Governmental Entities/Associations	
01/25/2011	Eagle Pass Water Works System	Does not request a hearing; Does not include a resolution of authority from governing body
01/25/2011	Maverick County Signed by Ricardo Ramos	Does not request a hearing; Includes only an unsigned Maverick County Resolution
01/25/2011	Maverick County Signed by David Frederick, Attorney	Does not provide requestor's location and distance relative to mine (signed Maverick County Resolution attached to letter)
01/25/2011	Rio Grande International Study Center	Requestor's alleged location is in Laredo, Texas, which is over 100 miles downstream from the mine
01/25/2011	City of Eagle Pass* Signed by Heriberto Morales, Jr.	Does not describe a justiciable interest. The letter asks a series of questions, but does not explain how the City would be adversely affected
1/31/2011	City of Eagle Pass* Signed by Mayor Ramsey English Cantu Resolution No. 2011-03R	Does not request a hearing
01/29/2011	Maverick County Environmental and Public Health Association	Does not provide requestor's location and distance relative to mine
01/31/2011	Kickapoo Traditional Tribe of Texas**	Requestor's alleged location is 12 miles downstream from mine.
08/31/2011	Kickapoo Traditional Tribe of Texas**	

EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
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02/01/2011	Maverick County Hospital District Signed by Elcira Bares	Does not provide requestor's location and distance relative to mine (No Resolution of authority filed with Chief Clerk)
Individual Hearing Requestors		
12/30/2010	Mr. and Mrs. Raul Espinoza 3420 Del Rio Blvd. Eagle Pass, Texas 78852 Claudio H. Sandoval 3907 Deer Run Blvd. Eagle Pass, Texas 78852 Jesus H. Sandoval 3903 Deer Run Blvd. Eagle Pass, Texas 78852 Jesus Fuentes 3949 Deer Run Blvd. Eagle Pass, Texas 78852 Claudio Sandoval Martinez 3913 Deer Run Blvd. Eagle Pass, Texas 78852 Jose Sandoval 3953 Fawn Dr. Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine

EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
Renewal of TPDES No. WQ0003511000

12/30/2010	<p>Mr. and Mrs. Jose M. Moval 1232 Royal Haven Eagle Pass, Texas 78852</p> <p>Mr. and Mrs. Hierro 1942 Sueno Circle Eagle Pass, Texas 78852</p> <p>Mr. and Mrs. Ramon Ferrer 1298 Agarita Eagle Pass, Texas 78852</p> <p>Mr. and Mrs. Alfonso A. Trevino 1298 Zarette Circle Eagle Pass, Texas 78852</p> <p>Mr. & Mrs. Santos Torres Rt. 2, Box 361 Eagle, Texas 78852</p> <p>Mr. & Mrs. Guillermo Villarreal 3572 Olmos Circle Eagle Pass, Texas 78852</p> <p>Mr. & Mrs. Enrique Trevino 1298 Zarette Circle Eagle Pass, Texas 78852</p>	Does not provide requestor's location and distance relative to mine
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EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
Renewal of TPDES No. WQ0003511000

12/30/2010	<p>Eli and Sharo Perez P. O. Box 4728 307 Thompson Road Eagle Pass, Texas 78852</p> <p>Gabriel & Leticia De La Cerda 307 County Road 307 Thompson Road Eagle Pass, Texas 78852</p> <p>Walter and Ladye Herring 3959 FM 1588 Eagle Pass, Texas 78852</p> <p>Betty & E.K. Taylor Route 2, Box 186 Eagle Pass, Texas 78852</p> <p>Prosser Martin and Kim Wall 2781 FM 1588 Eagle Pass, Texas 78852</p>	Does not provide requestor's location and distance relative to mine
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EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
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Renewal of TPDES No. WQ0003511000

12/30/2010	<p>Jim and Rosa O'Donnell HC 2, Box 194 Eagle Pass, Texas 78852</p> <p>Humberto and Ana Maria Gamez HC 2, Box 190 Eagle Pass, Texas 78852</p> <p>Tina and Albert Ellis HC 2, Box 172 Eagle Pass, Texas 78852</p> <p>Alonzo and Eva E. Gonzales Route 2, Box 185 Eagle Pass, Texas 78852</p> <p>Mike P. Hernandez Route 2, Box 171B Eagle Pass, Texas 78852</p>	Does not provide requestor's location and distance relative to mine
01/24/2011	<p>Terri Contreras Rt. 2, Box 211, US Hwy 77 Eagle Pass, Texas 78852</p>	Does not provide requestor's location and distance relative to mine
01/25/2011	<p>Carlos Hernandez, MD 1975 N. Veterans Blvd., Suite 6 Eagle Pass, Texas 78852</p>	Does not provide requestor's location and distance relative to mine

EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
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01/31/2011	Dr. Carlos E. de la Pena 6106 N. Hwy. 277 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
01/31/2011	Martha S. Ramirez P. O. Box 2020 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
01/31/2011	Martha M. Ramirez P. O. Box 2020 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/23/2011	Jim and Rosa O'Donnell HC 2, Box 194 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/29/2011	Ernest Ibarra 3187 Tina Drive Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/29/2011	Humberto and Ana Gamez HC 2, Box 190 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/29/2011	Walter & Ladye Herring 3959 FM 1588 Eagle Pass, TX 78852	Hearing request describes the requestors' property as adjacent to the mine, but provides no actual distance from the requestor's property to the mine; further fails to indicate whether the requestors' property is upstream or downstream of the mine.

EXHIBIT "D"
"Affected Person" Analysis of Hearing Requests and Comments from Governmental Entities
Dos Republicas Partnership Application
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08/30/2011	George Baxter P. O. Box 951 Eagle Pass, Texas 78553	Does not provide requestor's location and distance relative to mine
08/30/2011	Alonzo Gonzalez and Eva E. Gonzalez Route 2, Box 185 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/30/2011	Mike P. Hernandez Route 2, Box 171B Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
08/31/2011	Tina and Albert Ellis Route 2, Box 172 Eagle Pass, TX 78822	Does not provide requestor's location and distance relative to mine
8/31/2011	Betty and E.K. Taylor Route 2, Box 186 Eagle Pass, Texas 78852	Does not provide requestor's location and distance relative to mine
09/01/2011	Gabriel and Letecia de la Cerda *** 307 County Road 307 Eagle Pass, Texas 78852	Hearing request was untimely; Hearing request does not indicate whether the requestors' property is upstream or downstream of the mine.

* The City of Eagle Pass filed multiple comments/hearing requests on different dates. The City of Eagle Pass filed a resolution passed by the City Council and cover letter to the TCEQ on January 26, 2011. The resolution opposes the mine, but does not actually request a hearing. The City of Eagle Pass also filed comments which pose a series of questions, but does not explain how the City would be adversely affected.

EXHIBIT "D"
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** Kickapoo Traditional Tribe of Texas filed three separate hearing requests. The first request was received on January 25, 2011 at the public meeting. The second and third requests were received by the Chief Clerk's Office on August 31. The final version added two new individuals to its list of requestors, and was also received on August 31. In the second and third letter the Kickapoo Tribe cites to 16 TAC §12.209(a) as the grounds for granting it party status and a contested case hearing. This section of the Administrative Code applies only to the Railroad Commission, and is not controlling on TCEQ's determination regarding hearing requests. Furthermore, in its final request, the Kickapoo Tribe includes two individuals, Anson Howard and Ryland Howard, based on the proximity of the mine to these individuals' real property. The Kickapoo Tribe fails to provide the requestors' location and distance relative to mine.

*** The hearing request filed by Gabriel and Leticia de la Cerda was received by TCEQ on September 1. The deadline for **receiving** requests is 30 days after the date of TCEQ's Final Decision Letter. The Final Decision Letter is dated August 1, which makes August 31 the deadline by which hearing requests must be received by the Chief Clerk. If a hearing request does not meet this deadline, TCEQ rules state that the Chief Clerk "shall not process it." 30 TAC § 55.201(g)(1).